

1 TRINETTE G. KENT (State Bar No. 222020)
2 10645 North Tatum Blvd., Suite 200-192
3 Phoenix, AZ 85028
4 Telephone: (480) 247-9644
5 Facsimile: (480) 717-4781
6 E-mail: tkent@lemborglaw.com

7 Of Counsel to
8 Lemberg Law, LLC
9 A Connecticut Law Firm
10 43 Danbury Road
11 Wilton, CT 06897
12 Telephone: (203) 653-2250
13 Facsimile: (203) 653-3424

14 Attorneys for Plaintiff,
15 Michael St. Clair

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18 Michael St. Clair,

19 Plaintiff,

20 vs.

21 CVS Pharmacy, Inc.

22 Defendant.
23
24
25
26
27
28

Case No.:

COMPLAINT FOR DAMAGES

FOR VIOLATIONS OF:

**1. THE TELEPHONE CONSUMER
PROTECTION ACT**

JURY TRIAL DEMANDED

1 Plaintiff, Michael St. Clair (hereafter “Plaintiff”), by undersigned counsel,
2 brings the following complaint against CVS Pharmacy, Inc. (hereafter “Defendant”)
3 and alleges as follows:
4

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).
8

9 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3) and 28
10 U.S.C. § 1331.
11

12 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
13 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
14 where Defendant transacts business in this district.
15

16 **PARTIES**

17 4. Plaintiff is an adult individual residing in Lakeport, California, and is a
18 “person” as defined by 47 U.S.C. § 153(39).
19

20 5. Defendant is a business entity located in Woonsocket, Rhode Island, and
21 is a “person” as the term is defined by 47 U.S.C. § 153(39).
22

23 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

24 6. At all times mentioned herein where Defendant communicated with any
25 person via telephone, such communication was done via Defendant’s agent,
26 representative or employee.
27
28

1 7. At all times mentioned herein, Plaintiff utilized a cellular telephone
2 service and was assigned the following telephone number: 805-XXX-9878 (hereafter
3 “Number”).
4

5 8. Defendant placed calls to Plaintiff’s Number for the purpose of
6 conveying medical information.
7

8 9. The aforementioned calls were placed using an automatic telephone
9 dialing system (“ATDS”) and/or by using an artificial or prerecorded voice
10 (“Robocalls”).
11

12 10. When Plaintiff answered the calls from Defendant, he was met with a
13 Robocall informing him that his prescription needed to be refilled.
14

15 11. On or about March 12, 2016, Plaintiff called Defendant and demanded
16 that all automated calls to his Number stop.
17

18 12. Defendant’s representative, Kim, stated that she would attempt to remove
19 Plaintiff’s Number from Defendant’s calling list, but admitted that Defendant had
20 problems removing customer numbers in the past.
21

22 13. Despite Plaintiff’s unequivocal request that Defendant cease calling his
23 Number, Defendant’s automated calls continued at an excessive and harassing rate.
24

25 14. Defendant’s calls directly interfered with Plaintiff’s right to peacefully
26 enjoy a service that Plaintiff paid for and caused Plaintiff a significant amount of
27 anxiety, frustration and annoyance.
28

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47
U.S.C. § 227, et seq.**

15. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

16. The TCPA prohibits Defendant from using, other than for emergency purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).

17. Defendant's telephone system has the earmark of using an ATDS and/or using Robocalls in that Plaintiff, upon answering calls from Defendant, heard a Robocall stating that his prescription needed to be refilled.

18. Defendant called Plaintiff's Number using an ATDS and/or Robocalls without Plaintiff's consent in that Defendant either never had Plaintiff's prior express consent to do so or such consent was effectively revoked when Plaintiff requested that Defendant cease all further calls.

19. Defendant continued to willfully call Plaintiff's Number using an ATDS and/or Robocalls knowing that it lacked the requisite consent to do so in violation of the TCPA.

20. The TCPA creates a private right of action against persons who violate the Act. *See* 47 U.S.C. § 227(b)(3).

22. As a result of each call made knowingly and/or willingly in violation of the TCPA, Plaintiff may be entitled to an award of treble damages.

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- A. Statutory damages of \$500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

TRINETTE G. KENT

By: /s/ Trinette G. Kent
Trinette G. Kent, Esq.
Lemberg Law, LLC
Attorney for Plaintiff, Michael St. Clair